

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-782
)	
Petracom of Joplin, L.L.C.)	NAL/Acct. No. 200332560006
Licensee of Radio Station KCAR-FM in Galena,)	
Kansas)	FRN 0005-0098-40
Lutz, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 12, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Petracom of Joplin, L.L.C. (“Petracom”), licensee of FM radio station KCAR-FM, Galena, Kansas, apparently liable for a forfeiture in the amount of three thousand five hundred dollars (\$3,500) for willful and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Commission’s Rules (“Rules”).¹ Specifically, we find Petracom apparently liable for failing to conduct weekly tests of the Emergency Alert System (“EAS”), and failing to maintain all required material in the station’s public inspection file.

II. BACKGROUND

2. On November 7, 2002, an agent of the Commission’s Kansas City Office inspected the EAS installation and public file for radio station KCAR-FM, Galena, Kansas. The EAS equipment was set to automatically receive, re-transmit and log EAS tests. The most recent log entry of an EAS test was dated July 22, 2002. The station’s manager stated that the station had conducted no EAS tests. The station’s public file had no issues/programs list. The station’s manager stated that the station had no issues/programs list.

III. DISCUSSION

3. Section 11.61(a)(2)(i)(A) of the Rules requires that effective January 1, 1997, AM, FM, and TV stations must conduct tests of the EAS header and End of Message codes at least once a week at random days and times. The station’s logs and statements by the station’s management showed that the station failed to conduct the required weekly EAS tests from at least July 22, 2002 to November 7, 2002.

4. Section 73.3526(a)(2) of the Rules requires AM, FM and TV licensees and permittees to maintain a public inspection file. Among the required material to be maintained in the public file, AM

¹ 47 C.F.R. §§ 11.61(a)(2)(i)(A) and 73.3526(a)(2).

and FM licensees and permittees must maintain a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The lists shall be retained in the public inspection file until final action has been taken on the station's next renewal application.² On November 7, 2002, a review of station KCAR-FM's public inspection file revealed no issues/programs lists. The station manager stated there were no issues/programs lists even though the station had been owned by Petracom for at least two years.

5. Based on the evidence before us, we find that Petracom willfully³ and repeatedly⁴ violated Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules by failing to conduct weekly EAS tests and failing to maintain all required material in the station's public inspection file.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for public file rule violations is \$10,000. The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine an appropriate forfeiture amount for this violation.⁶ The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring. Therefore, we will assess the base forfeiture for failing to conduct EAS tests in the amount of \$2,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ In this case, we consider that the issues/programs list was the only item missing from the public inspection file, but that item had never been maintained by Petracom at the time of inspection. Therefore, we assess the forfeiture amount for the public file violation at \$1,500. Considering the entire record and

² 47 C.F.R. § 73.3526(e)(12).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁷ 47 U.S.C. § 503 (b)(2)(D).

applying the factors listed above, this case warrants a \$3,500 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Petracom is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand five hundred dollars (\$3,500) for willful and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules by failing to conduct EAS tests and maintain an issues/programs list in the public file.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Petracom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

(June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your

response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Petracom of Joplin, L.L.C., 1527 North Dale Mabry Highway, Lutz, FL. 33549.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director
Kansas City Office
Enforcement Bureau

Attachment